INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	1
Statute involved	2
Statement	2
I. The Board's findings of fact	2
A. Petitioner's point-scoring method of fixing hourly pay rates	2
B. Petitioner's refusal of the Union's request for information under its pay determination formula	7
II. The Board's conclusions and order	9
III. The decision of the court below	10
Argument	11
Conclusion	13

CITATIONS

Cases:	
General Pictures Co. v. *Western Electric Co.*, 304 U. S. 175	13
National Labor Relations Board v. *Otis Elevator Co.*, 208 F. 2d 176	11
National Labor Relations Board v. *Truitt Manufacturing Co.*, 351 U. S. 149	12
National Labor Relations Board v. *F. W. Woolworth Co.*, No. 413, this Term	11, 12
Statute:	
National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., 151, *et seq.*):	
Section 8 (a) (1)	9
Section 8 (a) (5)	9

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 519

TAYLOR FORGE & PIPE WORKS, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (Pet. 23–31) is reported at 234 F. 2d 227. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 153–186) [1] are reported at 113 NLRB 693.

JURISDICTION

The decree of the court of appeals (Pet. 32–35) was entered on July 23, 1956. The petition for a writ of certiorari was filed on October 19, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

[1] The symbol "R" refers to the joint appendix filed in the court below.

QUESTION PRESENTED

Petitioner computes the wage rate for each of its employees by using a "job sheet" on which it breaks the job down into its component factors, assigns certain point values to each factor (the number of points varying with the qualifications of the particular employee), adds the points for the various factors, and translates the sum of the points into dollars and cents. Thus, the wage rate for any employee depends upon the points he is assigned for each factor of his job. The question presented is whether in the course of bargaining negotiations the union representing the employees is entitled, on its request, to obtain from the employer the point ratings which the employer used in determining each employee's rate of pay.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended, are set forth in the Petition, p. 3.

STATEMENT

I

THE BOARD'S FINDINGS OF FACT

A. PETITIONER'S POINT-SCORING METHOD OF FIXING HOURLY PAY RATES

Petitioner pays its employees at an hourly rate, determined in the case of each job, by the number of "points" assigned to that particular work. Petitioner appraises the various factors on each job, each factor being awarded a certain number of points, and the resulting point total determines the rate per hour

which petitioner will pay (R. 158–159, 166; 111, 139–140).

Using a separate sheet for each job, petitioner first makes a written analysis of the work to be done (R. 157; 111, 53–55, 143). On one side, petitioner lists the job's physical aspects. On the other, petitioner sets forth the human factors involved and the point ratings which it finds these factors merit in view of the job's physical aspects. As stated above, these point ratings which petitioner accords ultimately determine the hourly rate of pay.

Specifically, the "Job Description" side of the sheet carries data under the headings: Purpose; Description; Machine; Tools; Production; Tolerances; Inherent Delays; Supervision; and Working Conditions (R. 157; 54–55, 143).

Of special interest in this case is the reverse side of the sheet, setting forth the "Job Rating—Substantiation Data." Here petitioner sets down the value of each rating factor in the job. Petitioner finds that every job can be resolved into the following 11 factors for purposes of rating: Education, Experience, Initiative and Ingenuity, Physical Demand, Mental or Visual Demand, Responsibility for Material or Product, Responsibility for Equipment or Process, Responsibility for Safety of Others, Responsibility for Work of Others, Working Conditions and Unavoidable Hazards (R. 158; 87, 111–112, 54–55, 143).

In appraising the foregoing 11 rating factors, petitioner uses as its yardstick a certain Job Rating Manual issued by the National Metal Trades Association. This Manual defines each factor and prescribes

that each is to be given a rating from 1st to 5th degree. It also states the conditions that are required for each degree of a given factor and what point value must be allowed under that degree of that factor (R. 158–159, 166; 86, 111, 57–68, 143).

Rating is done by comparing the written job description against the Manual's degree requirements; petitioner seeks to give each job rating factor that degree (from 1st to 5th), and hence that point value, which is called for by the job conditions so described (R. 158–159; 111–112, 143). This case concerns the efforts of the Union to ascertain what degree, and hence how many points, petitioner assigned to each factor in each job.

In the case of certain factors, petitioner's staff members, using the Manual as their standard, normally can fix the proper degree with accuracy. Thus an employee having less than 3 months' *Experience* rates only the 1st degree, while one with over 5 years must be scored under that factor's 5th degree (R. 60, 143). Similarly, under the factors *Responsibility for Material or Product* and *Responsibility for Equipment or Process,* the degrees to be assigned are governed strictly by the potentialities of damage or loss as measured by stated or ascertainable sums (R. 64–65, 143). That a high degree of exactness is contemplated by petitioner's job rating process appears from the fact that the governing Manual requires that in the case of each of these two responsibility factors the dollar values involved shall be based specifically on 1935–1939 average price levels as adjusted by a cal-

culation under the 1947–1949 Price Index of the U. S. Bureau of Labor Statistics (R. 63, 64, 143).

In the case of some of the other factors, however, the varying "degrees" which ultimately help determine the hourly rate do not lend themselves to precise, objective determination. Thus, under the Job Rating Manual, "considerable" ingenuity in planning and performing "unusual and difficult work" entitles an employee to the points awarded under the 4th degree of *Initiative and Ingenuity,* whereas "a high degree" of ingenuity, initiative and judgement on "very involved and complex jobs" rates the greater number of points which go with the 5th degree (R. 61, 143). In the same way, under *Responsibility for Safety of Others,* a job is performed under conditions of the 3rd degree where an employee's carelessness may mean lost-time accidents to others "such as crushed toes, feet, fingers, or hands, or eye injuries," while under the conditions of the 4th degree there is need of constant care to prevent "serious injury" to others who may, however, "act to prevent being injured" (R. 66, 143). Under *Physical Demand,* work involving heavy-weight material may be deemed to call either for "considerable physical effort," cognizable under the 4th degree, or for "continuous physical exertion" with "constant" or "severe" physical strain, coming under the 5th degree (R. 63, 143). Again, under *Mental and Visual Demand,* the work of the 4th degree requires the employee to concentrate mental and visual attention "closely" while "planning and laying out complex work," but the 5th degree calls for "exacting" mental or visual attention while

"planning or laying out involved and complex jobs" (R. 63, 143).

Petitioner's personnel manager, Paul Plevack, testified that, although he neither supervises nor regularly computes petitioner's job evaluations, he had been able to dispose of a number of grievances involving the propriety of hourly pay rates simply by computing the degree and point value of each factor of the job under consideration from the job description and rating manual. He stated that he invariably arrived at the result which the Company evaluators reached previously (R. 166; 111–112, 116). Plevack also claimed that the Union "could have ascertained" (R. 161, 167; 134–135) the correctness of the Company's stated total point score for each case "merely by evaluating each job as the company did" (R. 161; 70, 133–134), namely "from the job description alone" (R. 112, 114–116, 117–118) with "cross reference" to the Job Rating Manual (R. 114, 136). When asked, however, to evaluate the admittedly simple job of "Service Driver-Janitor" from such reference material, Plevack's determination of the total point score fell from 13 to 23 points short of the range petitioner previously had found the job to merit (R. 166; 125–126, 140). Plevack admitted that many jobs are more complicated (R. 166; 132). Petitioner thereafter conceded that the fixing of degrees under some factors goes beyond use of the written materials which petitioner had supplied the Union (see *infra*), and also calls for a knowledge of the job rating system, familiarity with the shop conditions involved, and the exercise of a certain

amount of judgment (R. 159; 112–113, 116–117, 136). The Board found that different evaluators, acting with complete objectivity, may arrive at significantly differing point ratings for given factors (R. 166).

B. PETITIONER'S REFUSAL OF THE UNION'S REQUEST FOR INFORMATION UNDER ITS PAY DETERMINATION FORMULA

On April 16, 1954, representatives of petitioner and the Union were engaged in a bargaining conference (R. 160; 81, 137). The current contract was to expire at the end of the month and no understanding had yet been reached regarding the matter of a wage increase which the Union was seeking (R. 159–160; 105, 137–138).

At the time, petitioner had in its files analysis sheets for each job unit, fully filled out as to job description on one side and as to job evaluation on the other (R. 160, 162, 168; 82, 84, 87, 109–110, 133, 138). Previously, petitioner had furnished the Union with copies of the Job Rating Manual, its Master Occupation Index or roster of jobs, its point conversion table which equated total point scores to hourly pay rates, and also with each job analysis sheet. However, petitioner had left blank the copies of that side of the job analysis sheets which pertained to job evaluation and which set forth the "degree" it assigned to each of the factors and the substantiating data (R. 161; 110, 97–99, 101–102, 82–83, 84, 87). Petitioner had also indicated previously a willingness to supply the Union with the total point score for each job (R. 161–162; 99–100). Over a period

of nine years, while processing individual grievances, petitioner had disclosed to the Union the "degree" ratings of 95 individual jobs out of 238 performed in its plant (R. 162; 89–90, 110). In addition, when single grievances had led to discussions of a number of other occupations, petitioner had revealed the "degree" ratings for each occupation involved (R. 162; 144–146). Petitioner also had given the Union to understand that it was ready to furnish the Union with this type of information as to any particular job as to which the Union should process a grievance (R. 178; 100, 110). Personnel Manager Plevack stated at the hearing that, if anything, there was "a lack of reticence on the part of the Company to give the point values whenever there was reason for doing so" (R. 134). It was the Company policy and practice to allow not only the Union but also individual employees, upon request and a showing of a good reason, an opportunity to examine an evaluation (R. 168; 148–150, 152).

At the conference on April 16, the Union's attorney asked Plevack for copies of the Job Rating Substantiating Data side of its analysis sheets (R. 160, 162; 87, 109). The attorney explained that the Union wanted the data relative to each rating factor for purposes of bargaining regarding both the operation of petitioner's job evaluation system and any inequities in that system (R. 160; 88). He added that under the existing conditions it was impossible for the Union to know whether the Company was administering its job rating on the merits or on an arbitrary basis so that the total points would equal a figure which it pre-

viously determined as the proper one for the job (R. 160; 88–89). The attorney also stated that the information was needed so that the Union could check the points assigned to each of the 11 factors against the objective conditions that the Union and its stewards could observe (R. 160–161; 89). Citing as a case in point the factor *Working Conditions,* he explained that it was important that the Union be able to see whether, where job conditions were the same, the points assigned were likewise the same or whether they differed and thus created inequities (R. 160; 88–89).

Plevack refused to furnish the requested information. He stated that the Union would not be given the opportunity to "pick apart" the Company's job evaluation system (R. 161; 88, 109–110, 133–134). Plevack also told the Union's attorney that because petitioner already had supplied the Union copies of the written material which it used in making its job evaluations, and because the Union had already obtained the complete point values for the jobs concerning which individual grievances had been processed in the past, the Union now had sufficient information from which it could evaluate each job in the same manner as petitioner (R. 161; 110, 133–134, 135).

II

THE BOARD'S CONCLUSIONS AND ORDER

Upon the foregoing facts a majority of the Board, in agreement with the Trial Examiner, found that petitioner by refusing the requested information violated Section 8 (a) (5) and (1) of the Act (R. 178,

179, 173). The Board majority found the requested data to be relevant and essential for the Union's intelligent representation of the employees in the bargaining negotiations (R. 178–179, 164). It further found the information to be reasonably available from petitioner's records, and that furnishing it, either by supplying copies of the Job Rating side of the evaluating sheets or permitting the Union to make its own copies, would not impose any undue burden upon petitioner (R. 178–179, 165, 168).

Two Board members dissented, taking the view that the data requested was too remote from the actual wage rates to be required for bargaining (R. 181–186).

The Board's order (R. 179–181, 176–177) requires petitioner to cease and desist from the unfair labor practice found. Affirmatively, petitioner is ordered to furnish the union upon request the point evaluation data for each of its pertinent hourly rated jobs, and to post appropriate notices.

III

THE DECISION OF THE COURT BELOW

The court below, Judge Finnegan dissenting, enforced the order of the Board. Noting that "the total point evaluation assigned by petitioner to the eleven involved factors was not only directly related to the pay determined for each job, but * * * constituted an important consideration in petitioner's entire wage structure" (Pet. 26), the court observed that it could "see no reason why either party to the bargaining

process should not furnish the other any relevant data or information in its possession pertinent to the wages determined for a certain job or to the wage structure as a whole" (Pet. 28). The court expressly agreed with the statements of the Trial Examiner and the Board that full disclosure of the point values was essential to the Union in its bargaining negotiations (Pet. 28, R. 164, 178).

ARGUMENT

The holding of the court below that petitioner must furnish the Union at its request with the "point" data which determines the employees' wage rates accords with the holdings of the other courts of appeals on this subject and presents no issue warranting review by this Court.

1. As pointed out in the Government's petition for certiorari in *National Labor Relations Board* v. *F. W. Woolworth Co.*, No. 413, this Term, pp. 7–8, the courts of appeals have repeatedly sustained the Board in requiring production of data relevant to wage rates. See especially *National Labor Relations Board* v. *Otis Elevator Co.*, 208 F. 2d 176 (C. A. 2). Contrary to petitioner's contention (Pet. 11–13), the *Woolworth* case is not in conflict with the decision of the court below. In *Woolworth*, the Ninth Circuit ruled that the Union had the burden of establishing the relevancy of the wage data sought, that there was no presumption of the relevancy of such data, and that there was no adequate showing of relevancy on the record made. In the instant case, the court of appeals found (R. 88–89), in agreement with the Trial

Examiner and the Board (R. 164, 178; Pet. 28–29), that the proof of record affirmatively established that the material sought was relevant to the bargaining. Accordingly, the court below did not reach the question presented in *Woolworth, i. e.,* whether wage data is presumptively relevant.

2. The decision of the court below is in accord with, and follows *a fortiori* from, this Court's decision in *National Labor Relations Board* v. *Truitt Manufacturing Co.,* 351 U. S. 149. *Truitt* sustained the Union's right, under the circumstances there present, to financial data relevant to bargaining, even though such data concerned the employer's own financial condition; the data at stake in the instant case determines the actual wage rates of the employees. Just as in *Truitt* the employer could not meet his bargaining obligation by reiterating a mere conclusion of financial ability, so here the employer cannot merely supply the conclusion—the ultimate wage rate—but must on request produce the subsidiary data which supports the conclusion he has reached.[2]

3. As petitioner states (Pet. 16–19; see also Pet. 29), this is the first case to present the complicated "point" method of determining wage rates. The court below, however, applied settled principles concerning the obligation to supply data pertinent to bargaining, and the fact that petitioner uses a unique

[2] The Union in this case expressed the fear that the employer might not be assigning points "on the merits" but "on an arbitrary basis so that the total would come to a figure previously ascertained by the company * * *" (R. 88).

method of determining wage rates furnishes no basis for grant of the writ. *General Pictures Co.* v. *Western Electric Co.*, 304 U. S. 175, 178.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

THEOPHIL C. KAMMHOLZ,
General Counsel,
STEPHEN LEONARD,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
FREDERICK U. REEL,
WILLIM J. AVRUTIS,
Attorneys,
National Labor Relations Board.
NOVEMBER 1956.

U. S. GOVERNMENT PRINTING OFFICE: 1956